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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

JUSTIN J.,

Petitioner,

v.

THE SUPERIOR COURT OF CONTRA
COSTA COUNTY,

Respondent;

CONTRA COSTA COUNTY
CHILDREN AND FAMILY SERVICES
BUREAU,

Real Party in Interest.

A156054

(Contra Costa County
Super. Ct. No. J170077, J1701078)

On December 6, 2018, the juvenile court set a hearing pursuant to Welfare and Institutions Code section 366.26¹ to consider termination of parental rights and select a permanent plan for three-year-old T.J. and his one-year-old sister A.L. The court also terminated reunification services to the children's parents, Justin J. and Kayla L. Justin seeks review by extraordinary writ of the December 2018 order, contending the juvenile court erred by terminating his reunification services with T.J. We deny Justin's petition on the merits.

¹ Statutory references are to the Welfare and Institutions Code unless otherwise stated.

I. FACTUAL AND PROCEDURAL HISTORY

A. Background

In September 2017, Justin and Kayla lived together in Justin's home with their 21-month-old son, T.J., and Kayla's oldest son, R.L., who was seven.² Justin and Kayla had a fight in front of T.J., which culminated in Kayla attempting to end her life by ingesting pills that had been prescribed to her, but she had stopped taking. Kayla, who was 35 weeks pregnant, was admitted to a psychiatric hospital, where she was interviewed by social workers from the Children and Family Services Bureau (Bureau).

Kayla reported that she and Justin had argued because she was going to leave him. Justin made her feel so bad she wanted to die, then encouraged her to take the pills and made a video of her on his phone before he called for an ambulance. Kayla also reported she was concerned for T.J. because of Justin's harsh discipline methods, but she felt there was nothing she could do because Justin had full custody. T.J. had a bruise on his bottom because Justin hit him so hard after he defecated in his pants. On prior occasions, he "gnawed" on T.J.'s cheek, and made him stand in the bathroom in the middle of the night as punishment for crying and waking up the family. Kayla felt that Justin used T.J. to control her. She also reported that Justin had been physical with her on two prior occasions. Both times, he pushed her, and she pushed back. The second time, they were both arrested, and Justin bailed her out of jail. Kayla acknowledged she had mental health issues associated with crying and sadness dating back to 2012. She also had a history of domestic violence with the fathers of her children.

Social workers interviewed Justin, who reported that he and Kayla were in a relationship and that she had been in and out of his house. Justin described the situation as " 'complex,' " and Kayla as mixed up, irrational and unable to take criticism. He acknowledged there was domestic violence in the home, but he claimed to have video evidence that Kayla was the physical aggressor in their arguments, and that she lost custody of two of her sons because she was violent. He filed for custody of T.J. after

² Kayla also had a five-year-old son who lived with his father.

Kayla started denying him access and saying the boy was not his. He felt that Kayla manipulated people and pushed men to their breaking point. He also reported that Kayla spanked or hit both T.J. and R.L.

Justin described his form of discipline as consistent and appropriate for his son, stating that T.J. “ ‘doesn’t get popped every day.’ ” Justin said he used time outs but acknowledged that he gave T.J. “ ‘two pops’ ” when he had a tantrum about candy. Justin explained that he spanked T.J. on the bare bottom because otherwise he “ ‘doesn’t comprehend he’s in trouble.’ ” Justin thought he and Kayla could be happy, but he blamed her father Bill L. for being over-involved in their life and believing that Justin was controlling and manipulative. Justin denied allegations of physical abuse, claiming that he and Kayla both nibbled T.J.’s cheek to show affection and denying any knowledge about how T.J. received a bruise on his buttocks. Regarding his most recent argument with Kayla, Justin explained that he was saying some “ ‘true things’ ” that upset Kayla because her tolerance level was so low. He did not think she would actually take the pills, but he filmed the incident to show her unstable mental health state.

The Bureau proposed a safety plan to which both parents agreed. Under the plan, there was to be no physical discipline of the children, R.L. would live with Bill, T.J. would live with Justin, and when Kayla was released from the hospital, she would not live with Justin. Kayla would have supervised visits, with someone other than Justin supervising. Justin and Kayla could discuss visits and the welfare of the children, but they would not be alone together or discuss other matters that could be a trigger for domestic violence.

Almost immediately, both parents violated the safety plan. They spent time alone, talked about their relationship and future, and argued about whether Justin would have a DNA test after the new baby arrived. Justin became increasingly agitated with the Bureau, accusing the social worker of keeping information from him, being “ ‘flaky,’ ” and changing the plan. He maintained that the original agreement was only that he and Kayla could not see each other in front of the children.

In October 2017, Kayla had a baby girl, A.L. She did not put Justin's name on the birth certificate because she did not think the baby was his. Justin spent time at the hospital and told the social worker that Kayla and the baby were coming home with him. Meanwhile, Kayla reported that she told Justin she was going to live with a friend, but he was trying to make her go to his home. She said that Justin told her that the Bureau had no legal rights, that they did not have to follow the safety plan, and that nobody would know if they did not follow it. Kayla said she felt pressured and manipulated by Justin.

After Kayla was released from the hospital with the baby, she retrieved R.L. from Bill's home, telling her father that the safety plan was no longer in place. By monitoring Facebook and other sources, Bill concluded that Kayla was spending time with Justin.

On October 17, 2017, the Bureau held separate meetings with each parent. Support staff and family members also attended. The Bureau determined the parents were unable or unwilling to follow a safety plan.

B. T.J.'s Dependency Petition and Disposition Order³

On October 19, 2017, the Bureau filed a dependency petition on behalf of T.J. under section 300 subdivision (a) [serious risk of harm], and subdivision (b)(1) [failure to protect]. The Bureau alleged that Justin posed a risk of serious harm because he spanked T.J. so hard he left a bruise on his bottom, and bit T.J.'s cheek, leaving a bruise. Both parents were named in the failure to protect allegations for engaging in domestic violence in front of T.J. The Bureau further alleged that Kayla used physical discipline inappropriately and had mental health problems.

At an October 20, 2017 detention hearing, Justin was named the alleged father of T.J. and appointed counsel. T.J. was placed in Bill's home. On November 3, Justin was elevated to presumed father status and granted visitation. On December 7, the court exercised jurisdiction over T.J. pursuant to section 300, subdivision (b), after Justin stipulated there was a factual basis for allegations that he placed T.J. at substantial risk

³ The Bureau filed separate petitions for T.J., A.L., and R.L. Many court proceedings and orders pertained to both T.J. and A.L., and some involved R.L. as well. Our background summary focuses on T.J. and on Justin.

because he (1) engaged in domestic violence with Kayla in front of T.J., and (2) had a history of imposing inappropriate physical discipline upon T.J. The section 300, subdivision (a), allegations of causing harm by spanking and biting T.J. were dismissed.

In a January 2018 disposition report, the Bureau recommended that T.J. be adjudged a dependent and that both parents receive reunification services. The Bureau reported that Justin and Kayla had terminated their relationship with each other and were both determined to work on becoming better parents to T.J. They had accepted responsibility for their actions and were willing to participate in services. Justin still believed that the dependency was initiated because of a “miscommunication,” but he acknowledged that he had misunderstood the importance of the safety plan and he was now “willing to accept his faults and accept responsibility in how he contributed to [the] situation.” On January 4, 2018, T.J. was adjudged a dependent and reunification services were ordered for both parents. Each parent was provided with a separate case plan. Justin was required to participate in a domestic violence treatment program, secure stable housing for his children and complete a parenting class.

C. The Reunification Period

Throughout the reunification period, T.J. was placed with A.L. and R.L. in the home of their grandfather, Bill. Other maternal relatives also lived in the home. The children were happy and well cared for. Bill wanted the parents to reunify with their children but was willing to be a permanent guardian if reunification efforts failed. Meanwhile, the following events unfolded.

On January 4, 2018, Justin and Kayla were married, but they did not disclose their marriage to the Bureau for several months. Later in January, Justin took a paternity test and submitted results confirming he was A.L.’s father.

In April 2018, Justin complained to the Bureau social worker that there were things going on in this case that he did not appreciate and would not tolerate. He declined to elaborate but asked for a supervisor’s contact information, which was provided, although he did not follow up. The social worker was confused and concerned

by Justin's behavior. Kayla reported that threatening to contact a supervisor was a tactic Justin used to feel in control.

In May 2018, Kayla reported that Justin had called and upset her by saying he was going to relinquish his parental rights. Several days later, the social worker contacted Justin to discuss visitation. He was cordial and cooperative, and he said nothing about terminating his rights. During a meeting in May, the social worker questioned Justin about a report by Kayla that Justin drew a violent illustration of Bill. In the picture Kayla described, Bill was slaughtered and bleeding with weapons protruding from his body and a gun pointed at his head, while Justin stood by eating cotton candy. When the social worker relayed this information, Justin "chuckled," denied that Kayla's description was accurate, and explained that the drawing was just a way for him to release stress. On another occasion in May, the social worker called Justin to talk about his case plan, but he responded that he could not talk with her until he spoke to his attorney, which was disconcerting because Justin had previously claimed that he fired his attorney.

By June 2018, Kayla was employed and living with her cousin in stable housing. She hoped to move in with Bill, so she could spend more time with the children. She claimed to understand that although she was legally married to Justin, she needed to work toward having the children returned to her alone. Justin participated in supervised visits with his two children, which went well, and he stated he was committed to having them returned to his care. He was working toward reunification at a "different" pace than Kayla, but he had maintained stable housing and had submitted a certificate from a parenting class, and proof of attendance at some domestic violence education classes. However, Justin was asked to leave the domestic violence program after instructors discovered that Justin and Kayla were attending the same class.

In a July 2018 status report, the Bureau opined that the prognosis for reunification was poor but nevertheless recommended an additional six months of services for both parents. This report was submitted to the juvenile court at a July 12 hearing, but the six-month status review was continued because an attorney who had just been appointed for the children was not prepared to proceed.

On July 25, 2018, the Bureau filed a memorandum requesting that the court terminate services to both parents and schedule a section 366.26 hearing. The Bureau changed its previous recommendation after learning about a July 19 domestic violence incident. Unbeknownst to the Bureau, Justin and Kayla had been living together. When one of their conflicts turned physical, a neighbor called the police and Kayla was transported to a medical center for a “51’50 hold,” but hospital staff elected not to detain her. When Kayla finally discussed the incident with the social worker, she lied about why she was at Justin’s house, but then admitted she had been staying there. According to Kayla, the fight happened because Justin made her feel so bad, she told him she did not want to live anymore. Justin responded by threatening to report her suicidal thoughts to the Bureau, Kayla became so angry she said things that infuriated Justin, and then Justin began hitting and choking her until she kicked him in the groin so hard that he cried “ ‘like a baby.’ ”

At a July 27, 2018 hearing, both parents objected to the Bureau’s new recommendation and requested a contest. Due to counsels’ unavailability, the contest was set for September 13. The court expressed grave concern about the parents’ behavior, denied Justin’s request for unsupervised visits, and ordered that neither parent was to go to Bill’s home for any reason.

On September 13, 2018, the juvenile court and parties had a lengthy off-the-record discussion about the status of the case. On the record, the court asked counsel for the children if she was amenable to the court authorizing the Bureau to provide the parents with an additional six weeks of services before proceeding with the contest. Since the last hearing, Kayla had joined a residential program and was fully engaging in services. Justin had returned to domestic violence classes and was in therapy. Minors’ counsel was hesitant but stipulated to the continuance. County counsel emphasized it was rare for the Bureau to agree to a continuance like this, urged the parents to use their time wisely, and requested that Justin treat the social worker with respect during their communications. In response to the court’s inquiry about Justin’s behavior, the social worker explained that he was appropriate with the children, but he was antagonistic and

intimidating when he interacted with her. The court asked Justin directly if he understood how he was being perceived and what he needed to do differently. Justin responded that he did. Ultimately, the court agreed to continue the review hearing so additional services could be provided, but it chastised the parents for being manipulative, deceptive and volatile, and emphasized the need to “show a real positive change for some time consistently.”

At an October 19, 2018 hearing, the Bureau submitted a brief report updating the court about the family and amending its recommendation. Kayla was in residential treatment, engaged in services and out of contact with Justin. Justin had been provided referrals for mental health services and an anger management program, but the Bureau did not know if he followed up. He had been rude to the social worker and case worker who supervised visits. Accordingly, the Bureau recommended that the court continue services to Kayla but terminate services to Justin. However, after a long off the record discussion, the court continued the hearing for two weeks, so the Bureau could verify Justin’s representations regarding his recent efforts to comply with his case plan. At the continued hearing on November 1, the court agreed to extend the reunification period again and set the matter for a review in December.

D. The December 2018 Review

On December 6, 2018, the court held a combined six and twelve-month review hearing. The Bureau submitted a report, which recommended terminating services to both parents, and setting a section 366.26 hearing. Both parents opposed this recommendation, submitting documentation of their participation in services. The court heard testimony from Justin and the social worker.

1. The Status Review Report

The Bureau reported that Kayla was terminated from her residential treatment program in November, after multiple warnings about escalating aggressive behavior toward residents and staff. Kayla, who was unable to take her mood stabilizing medication because she was pregnant, did not have a permanent residence and was considering returning to Justin’s house. Justin contacted the Bureau to advise that he

would not permit Kayla to live in his home. Kayla told the social worker she was confident Justin would take her in.

Justin had followed up on mental health service referrals but was unable to enroll in an anger management program “due to reasons related to billing.” He was attending a domestic violence support group at “STAND” and participating in individual therapy. His STAND instructor reported he was engaged and doing well. His therapist reported that he was “punctual and engaged in therapy.” He had weekly supervised visits with the children, which went well. However, there were still times when Justin refused to speak to the social worker. The Bureau had ongoing concerns about Justin’s “unpredictable and argumentative nature and the very volatile nature of the relationship between the parents.”

At the conclusion of its report, the Bureau provided the following summary of the basis for its recommendation to terminate services: “Neither [Kayla] nor [Justin] have been able to engage in services enough to show they truly understand the impact their volatile relationship has had on their children. [Justin] and [Kayla] have attempted to control the Bureau through lies and, manipulation. They have blamed others for the condition of their family. They engaged in domestic violence as late as August 2018 [and] they also failed to engage in services until then. Because of [Justin] and [Kayla’s] refusal to engage in services, their children . . . have remained in foster care for more than one year.”

2. Justin’s Testimony

Justin testified that because he did not grow up in a domestic violence environment he hadn’t recognized that he and Kayla were caught up in a “cycle” of fighting and argument that could potentially harm his children. Justin provided vague and confusing responses when his counsel and the juvenile court asked what he learned from participating in domestic violence education classes. When pressed for an example of something he did with Kayla that he should not have done, Justin gave this reply: “I should not have used the actuality that she had admitted that the bitch-child may not have been mine—to try to get her to understand that she is causing a problem, that was my

fault. ¶ Even though it was the truth, I used that . . . to respond to the conversation we were having . . .” Justin testified that participating in therapy was helping him learn about himself and how to have a better relationship with Kayla. He said that his ultimate goal was to be reunited with his children.

Justin testified that he married Kayla in January 2018, they lived together for about a month and after that she came and went as she pleased. In July, when he and Kayla had the fight that brought the police to his house, they were not “together,” but she was coming and going. After that, there was a “cease of communication,” but they still had contact on and off. Justin testified that the domestic violence incident in July led to a “ ‘lightbulb moment’ ” when he realized that no matter what he did right, he could not control other people’s behavior. Since then, he tried to have positive rather than negative communications and interactions.

Justin testified that he stopped having contact with Kayla in July or August 2018, around the time she filed for divorce. However, he contradicted himself by admitting that he communicated with Kayla by phone and text. He also admitted that he sent Kayla a nude or partially nude photograph of herself, explaining he thought that would improve their communication because she would find it funny. Under cross-examination, Justin acknowledged that he and Kayla had a conversation recently about her current pregnancy and whether he is the baby’s father. Justin believes he is the father and that the baby was conceived while they were performing their “marital responsibilities” in June or July.

Justin admitted that he spanked T.J. but denied ever giving him a bruise on his bottom or on his cheek. He also claimed that he has never hit Kayla. He testified that he has “never been physical, abusive, towards women,” as that is not his “nature.” He admitted there were occasions when Kayla had scratches on her body but testified that they resulted from him putting up his hands to avoid an oncoming attack. Thus, Justin confirmed his earlier admission that he had been a participant in domestic violence but explained that his participation consisted of defending himself.

Justin denied that he was reluctant to work with the social worker or that he refused to communicate with her. He testified that he decided recently that he would

renew communication with Kayla because he feels she is no longer in an aggressive state, as compared to when the Bureau first intervened or when the police were called in July 2018.

3. The Social Worker's Testimony

The Bureau social worker, Ms. Williams, was assigned to this case in February 2018. Initially, the parents appeared to be cooperative, but Williams soon realized they were hiding things, including the fact that they got married in January, and that there was an altercation involving Kayla's co-worker that occurred at Justin's house in March. The parents also lied to her, reporting they were no longer a couple, and claiming that Kayla was living with a friend when she was living with Justin. Williams confirmed various incidents recounted in the Bureau reports, such as when Justin refused to talk to her on the phone for no apparent reason. Williams also acknowledged that she had trouble communicating with Justin in a positive way, describing him as argumentative and accusatory. Communication with Justin improved because she limited it to texting with him.

4. Arguments of Counsel

Kayla's counsel acknowledged that Kayla's termination from her residential program was unfortunate but attributed it to the fact that pregnancy prevented her from taking mood stabilizing medication. Counsel argued that Kayla should be granted an additional period of reunification services because she was fully engaged in a new program, had stabilized and strengthened her relationship with Bill, and always had positive visits with the children.

Justin's counsel opposed the Bureau recommendation to terminate his reunification services. She acknowledged that Justin did not make much progress during the early phase of this case but argued that he changed after the July 2018 domestic violence incident. He participated in services, adjusted his attitude and there were no subsequent incidents of domestic violence. Moreover, he had always been consistent and appropriate with visitation, thus demonstrating that an additional period of services would benefit him and the children.

County counsel argued that the evidence disproved Justin's claims that he had disengaged from his relationship with Kayla and changed his behavior. Justin was participating in services but was not taking responsibility for anything that had happened. His degrading and manipulative behavior came out in his testimony. Beyond that, the efforts he did make came way too late, and there was no substantial probability that the children could be placed safely in Justin's care before the 18-month deadline. Counsel argued that Kayla's situation was worse. The best place to assist her was the residential program that terminated her because she was unable to control her behavior. Counsel for the children was in complete agreement with County counsel and fully supported the Bureau's recommendations.

E. The December 2018 Order

At the conclusion of the hearing, the juvenile court prefaced its findings with these remarks: "This is sure a sad case. These children were removed in—well, actually, there was a voluntary before this, but these children were finally removed from these parents back in October of 2017. We are now in December of 2018. I can say, without a doubt, this is too little, too late."

Then the court outlined its findings, which included that neither parent was trustworthy, the children would not be safe with either parent, and even if the reunification period was extended to the statutory deadline, the children would not be safe with either parent. The court directed many remarks at Justin, specifically, finding: Justin was not a credible witness; his perceptions were "ludicrous and self-aggrandizing"; "the level of manipulation" displayed during his testimony was "frightening"; and his "threatening" presentation was a way for him to exert control.

Explaining why it was not conceivable that the children could be returned home if reunification services were extended for another period, the court reiterated that it did not trust either parent, found that neither was focused on the best interests of their children, and concluded: "Whatever tangled relationship they have with each other, and whatever very disturbing thing that [Justin] is working with in his life, are very—of great concern to this Court."

The court adopted the Bureau’s recommendations to terminate services and set a section 366.26 hearing for T.J. and A.L. The court also ordered that both parents were to have supervised visits twice a month, rather than just once a month as the Bureau had proposed.

III. DISCUSSION

Justin does not challenge the juvenile court finding that T.J. could not be returned safely at the 12-month review hearing, but he contends the court erred by refusing to provide him with an additional period of reunification services.

“We review an order terminating reunification services to determine if it is supported by substantial evidence. [Citation.] In making this determination, we review the record in the light most favorable to the court’s determinations and draw all reasonable inferences from the evidence to support the findings and orders. [Citation.] ‘We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.’ ” (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 688–689.)

When a dependent child cannot be returned safely to the home at the 12-month review, the juvenile court has discretion to extend the reunification period to the 18-month deadline only if: (1) reasonable services have not been provided; or (2) there is a substantial probability that the child can be returned to the physical custody of the parent and “safely maintained in the home within the extended period of time” (§ 366.21, subd. (g)(1).) Justin contends both circumstances were true here. We disagree.

A. Justin Was Provided Reasonable Services

In the juvenile court, Justin never disputed the adequacy of his case plan or claimed that he was not afforded reasonable reunification services. We question whether he can properly raise this issue for the first time in this court. (See *In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110; *In re Christina L.* (1992) 3 Cal.App.4th 404, 416.) Even if the issue was not waived, Justin’s claim that he was not afforded reasonable services lacks merit.

“ ‘[T]he focus of reunification services is to remedy those problems which led to the removal of the children.’ [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent’s problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [Citation.] ‘The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.’ ”
(*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598–599.)

In this case, T.J. was removed from Justin’s home because of Justin and Kayla’s dysfunctional relationship, domestic violence in the home, and Justin’s history of using inappropriate discipline. Justin was afforded services to address these problems, including referrals to a parenting class, a domestic violence education program, anger management and individual counseling. Justin availed himself of these services to a certain extent, but he did not make the substantive changes required to resolve the problems that led to this dependency.

Justin characterizes this case differently. He contends the children were removed because of Kayla’s mental illness. Therefore, Justin posits, the Bureau was required to provide him with services tailored to help him understand the severity of Kayla’s condition and how to deal with it, which it did not do. As support for this argument, Justin cites *Patricia W. v. Superior Court* (2016) 244 Cal.App.4th 397 (*Patricia W.*).

In *Patricia W.*, a mother began hearing voices for the first time in her life following the birth of her son. (*Patricia W.*, *supra*, 244 Cal.App.4th at p. 402.) Initially she was diagnosed with postpartum depression but later she received a diagnosis of schizophrenia. The mother’s mental illness was the sole basis for removing her toddler from the home; she had trouble managing her medications, and the father appeared to be in denial about the seriousness of her condition. (*Id.* at pp. 402–403.) Under those

circumstances, a reunification plan that was not tailored to address the mother's mental illness was deemed inadequate. (*Id.* at pp. 420–424.) In this case, by contrast, Kayla's mental health was one of several problems that led to the dependency, and the Bureau did afford her services to address that issue. However, there is no basis for concluding that Justin was in denial about Kayla's condition. If anything, the Bureau was concerned about Justin exploiting Kayla's mental health problem, which is why the parents were provided with distinct case plans and encouraged to establish separate homes that would be safe for their children. Justin was provided with services tailored to achieve that goal, but he failed to attain it.

B. There Is No Substantial Probability of Returning T.J. to Justin

The juvenile court may extend the reunification period to the 18-month statutory deadline pursuant to a finding that there is a substantial probability that the child will be returned to the parent within that extended period only if the following circumstances are all true: “(A) That the parent . . . has consistently and regularly contacted and visited with the child. [¶] (B) That the parent . . . has made significant progress in resolving problems that led to the child's removal from the home. [¶] (C) The parent . . . has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.” (§ 366.21, subd. (g)(1).)

In this case, Justin had consistent visits with T.J. But he did not make significant progress in resolving the problems that led to this dependency, notwithstanding his belated efforts to engage in services. Nor did he demonstrate the ability or capacity to reach the core objective of his case plan, which was to provide a safe home for his children, where they would not be exposed to domestic violence or the other dangerous aspects of Justin and Kayla's dysfunctional relationship. Thus, the juvenile court did not have authority to extend the reunification period, even if it had been inclined to do so. (§ 366.21, subd. (g)(1).) Moreover, when a dependent child is not returned to a parent at the 12-month review, and “there is no substantial probability of return to the parent within 18 months of the original removal order, the court *must* terminate reunification

efforts and set the matter for a hearing pursuant to section 366.26 for the selection and implementation of a permanent plan.” (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249, italics added.)

Justin contends that the juvenile court erred by “speculating” that he would not be able to reunify within the 18-month time frame. We disagree. The court’s finding was supported by concrete evidence including the Bureau reports and hearing testimony from the social worker and Justin himself. Justin also contends that the juvenile court’s ruling contradicts the legislative intent of the dependency scheme, which focuses on preservation of the family. However, he ignores that the “focus shall be on the preservation of the family *as well as* the safety, protection, and physical and emotional well-being of the child.” (§ 300.2, italics added.) At this late stage in the dependency it was incumbent on Justin to demonstrate that he has the capacity to provide for the safety, protection, physical and emotional well-being of T.J., which he did not do. Thus, the juvenile court did not abuse its discretion by refusing to extend reunification services beyond the 12-month statutory deadline.

IV. DISPOSITION

The petition for extraordinary relief is denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

TUCHER, J.

WE CONCUR:

POLLAK, P. J.

BROWN, J.